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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

AT PORTLAND

ANDREA OLSON,

Plaintiff,

v.

MBO PARTNERS, INC., a Virginia Corporation; **UNITED STATES OF AMERICA**, by and through the Department of Justice, Department of Energy, and Bonneville Power Administration; and **JAMES COX**, United States Attorney's Office,

Defendants.

Case No. 3:15-cv-02216-HZ

DEFENDANT'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT, OR IN THE ALTERNATIVE, TO STAY AND COMPEL ARBITRATION

I. INTRODUCTION

In response to Defendant MBO Partners, Inc.'s ("MBO Partners") Motion to Dismiss Plaintiff's Amended Complaint, or in the Alternative, to Stay and Compel Arbitration ("Motion to Dismiss the Amended Complaint"), Plaintiff Andrea Olson ("Olson") reiterates several arguments in an attempt to avoid compliance with the General Service Agreement she signed

with MBO Partners on January 10, 2012 (the “Agreement”). This Court, however, has already considered these arguments and rejected them in granting MBO Partners’ Motion to Dismiss Olson’s initial Complaint. Accordingly, MBO Partners asks this Court to again dismiss Olson’s claims against the company and require her to arbitrate her claims as set forth in the parties’ Agreement.

II. ARGUMENT

A. Olson Is Subject to an Enforceable Arbitration Provision.

Olson’s Response to MBO Partners’ Motion to Dismiss the Amended Complaint raises a number of arguments that are virtually identical to those offered in her first Response to MBO Partners’ Motion to Dismiss Olson’s initial Complaint. Dkt. Nos. 27 and 28. The Agreement contains a provision that establishes arbitration as the exclusive method for resolving any disputes arising out of Olson’s relationship with MBO Partners (the “Arbitration Provision”). Olson again submits four arguments in support of her claim that the Agreement and Arbitration Provision are invalid: (1) the Agreement is unenforceable under ORS 36.620; (2) the Agreement is unconscionable; (3) MBO Partners obtained Olson’s signature on the Agreement under duress; and (4) MBO Partners misrepresented the terms of the Agreement to fraudulently induce Olson’s signature. Pl.’s Response in Opposition to Motion to Dismiss the Amended Complaint (“Pl.’s Resp.”) at 3-7.

Olson’s arguments are misplaced and MBO Partners has already addressed why the parties’ Agreement is enforceable. *See* Dkt Nos. 35 and 59. More importantly, this Court has already considered these claims and rejected them. *See* Dkt. No. 48. (“Plaintiff contends that the arbitration provision is unenforceable because it violates Oregon law, the Agreement is unconscionable because it is an adhesion contract, Plaintiff was forced to sign the Agreement under duress, and the Agreement was the result of misrepresentation or fraudulent inducement. Each of Plaintiff’s arguments fails.”)

In short, Olson's Response to the Motion to Dismiss the Amended Complaint does not allege any new facts that would alter this Court's conclusion concerning the validity of the parties' Agreement. Olson is subject to an enforceable Arbitration Provision and she must arbitrate her claims against MBO Partners.

B. The Court Should Dismiss Plaintiff's Claims Against MBO Partners.

Olson's Response also asks the Court to stay the case and compel arbitration, rather than granting dismissal. Pl.'s Resp. at 9. Dismissal, rather than a stay, however, is appropriate here because all of Olson's claims against MBO Partners are subject to an enforceable arbitration agreement. *See Sparling v. Hoffman Const. Co.*, 864 F.2d 635, 638 (9th Cir. 1988) (holding that a district court acted in its discretion when it dismissed all of plaintiff's arbitrable claims); *Alford v. Dean Witter Reynolds*, 975 F.2d 1161, 1164 (5th Cir. 1992) (affirming district court decision to dismiss plaintiff's claims that were subject to arbitration); *White v. Turner*, No. CV H-15-1485, 2016 WL 1090107, at *3-4 (S.D. Tex. Mar. 21, 2016) (dismissing all claims against one of two defendants where all claims against one defendant were subject to arbitration).

The parties' Agreement contains an Arbitration Provision that clearly states they will arbitrate any controversy or claim:

[A]rising out of or related to [the parties'] relationship or dealings, under this Agreement, under state, federal or local or other law, under common law, or otherwise."

Dkt. No. 18, Ex. 1, ¶ 10.

In her Amended Complaint, Olson makes several allegations against MBO Partners, including disability discrimination and retaliation and Family and Medical Leave Act ("FMLA") discrimination. All of these claims fall squarely within the scope of the Arbitration Provision. In light of the parties' binding Agreement, the Court should dismiss Olson's claims against MBO Partners.

III. CONCLUSION

For the foregoing reasons and the reasons stated in Defendant's Motion to Dismiss the Amended Complaint, the Court should enforce the Arbitration Provision and dismiss Olson's claims entirely or, in the alternative, compel Olson to arbitrate her claims as contractually agreed.

DATED this 1st day of June, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **DEFENDANT'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT OR IN THE ALTERNATIVE, TO STAY AND COMPEL ARBITRATION** on:

Andrea Olson
3404 SW Comus Street
Portland, OR 97219
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Plaintiff

by mailing a copy thereof in a sealed, first-class postage prepaid envelope, addressed to said attorney's last-known address and deposited in the U.S. mail at Portland, Oregon on the date set forth below;

by causing a copy thereof to be hand-delivered to said attorney's address as shown above on the date set forth below;

by faxing a copy thereof to said attorney at his/her last-known facsimile number on the date set forth below; or

by emailing a copy thereof to said attorney at his/her last-known email address as set forth above.

DATED this 1st day of June, 2017.

DAVIS WRIGHT TREMAINE LLP

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